



Internet shopping is fast, convenient and gives unparalleled access to goods and services from the comfort of your own home, but what do you do if something goes wrong? **Andrew Wand** fights for his consumer rights online

There may be just two certainties in life – death and taxes – but for many computer users there is also a third: buying online. When you buy something over the internet, you probably take the usual precautions, such as buying only from reputable companies, using a credit card and making sure the website you're using is secure. Most of the time that's all you need to do. The goods will arrive on time, they'll be of good quality and you'll be a happy shopper.

If you're lucky, you'll never need the advice we're about to give in this feature. At some point, though, something will go wrong. An item you've paid for may not arrive, or when it does you might find that it is damaged or doesn't work. Or perhaps it simply doesn't look as nice as it did on the webpage and you don't want it.

All you need to sort such problems out is here in this feature and on our cover disc. You'll find out what your legal rights are, how to assert them and what to do if the vendor won't listen.

THE PRICE IS RIGHT

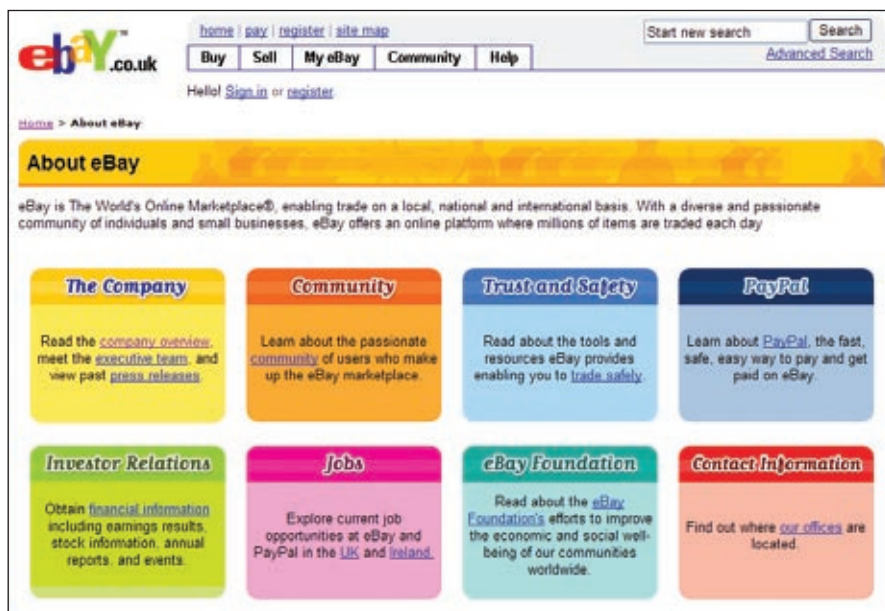
Sometimes an online purchase can go wrong from the start. Imagine, for instance, that you've gone to a website, placed an order and given

your credit card details. The company is now obliged to send out the goods you've ordered, isn't it? In fact, the transaction is not actually complete until the company sends you a confirmation email. What's more, it depends what the company's terms and conditions state. These shouldn't affect your statutory rights, but there is one area not currently covered specifically by legislation, although a precedent in law has recently been set.

There's a common belief that if an item is advertised at a particular price on a website, the vendor is obliged to sell it at that price, even if it is obviously a mistake. However, this is not true. In 2005, Argos's Homebase advertised a TV with digital receiver and integrated DVD recorder on both its websites for 49 pence when it should have been £349.99. Disgruntled buyers whose orders were not accepted by the Argos Retail Group took the case to court. However, Argos



◀ Despite mistakenly advertising a TV with DVD recorder and digital receiver for 49p on its website, Homebase was not legally obliged to sell the item for that price



▲ The legislation governing auctions is very complicated, which is why eBay classifies itself as a venue rather than an auction site

had done everything correctly. The website's terms and conditions state that if a pricing error occurs the buyer has the option of accepting the correct price or cancelling the order, and if money has already been sent then a refund will be made. What's more, the retail giant didn't send out any confirmation emails after the orders were placed.

The judge further ruled that as this was clearly and obviously a pricing mistake, it was unlikely that the company would have been obliged to sell the TVs at the lower price even without the caveat in its terms and conditions.

LAW OF THE LAND

Apart from cases of incorrect pricing, it's usually after you've paid for an item and received confirmation of the order that things go wrong and you may have to call on the protection of the law. We all know we have rights, but simply shouting that fact at the customer service representative won't make them take you seriously. It sounds a lot better and more authoritative if you can state what your rights are and from which laws they originate.

Consumers' rights are fairly well covered under UK law. The Consumer Protection (Distance Selling) Regulations 2000 and the 2005 amendment to those regulations, more commonly known as the Distance Selling Regulations, provide those who shop from home with a few extra rights. These regulations cover you if you buy goods online, over the telephone, by mail order, fax or through digital TV from a trader who sells to you without face-to-face contact.

However, some goods and services are not covered. These are financial services, land deals, goods bought from a vending machine, goods bought using a public telephone and goods from auctions. Different legislation covers these transactions, and the law relating to auctions is highly complicated. For this reason, eBay classifies itself as a venue rather than an auction site. The company's user agreement covers transactions dealt with under contract.

The Distance Selling Regulations give you the right to clear, precise information about goods and services, a cooling-off period of seven

days to withdraw from the contract and protection from payment card fraud. The retailer is required to provide their postal address and information about any charges if you should need to return the item.

Although you can cancel your order within seven days, you must do so in writing; an email will do, but a telephone call is not enough. There are products exempt from this rule. Some you might expect, such as perishable goods and items made to your specifications, but others you may not, such as software, DVDs and CDs. If you have opened goods such as these, you cannot return them.

It's also no mistake that the phrase 'card payment' is used in the legislation. This is because the regulations cover not only credit cards but also debit, store and charge cards. If your card is used fraudulently, you are entitled to cancel any payment and receive a refund from the card issuer.

ONLINE REGULATIONS

The Sale and Supply of Goods to Consumers Regulations 2003 brought in a couple of changes to the law that are of immense benefit to online shoppers. These regulations place responsibility for an item on the seller until it has been delivered.

The law also changed the burden of proof in the case of defective goods. Now, rather than

you having to prove that the item was defective when it arrived, the seller has to show that the goods were not defective.

Both sets of regulations are in addition to your statutory rights, covered by the Sale of Goods Act 1979 (amended 1994) and the Supply of Goods and Services Act 1982. These acts cover transactions no matter whether they're made online or on the high street.

Under these laws, any item you buy, whether it's brand new or second-hand, must be of satisfactory quality, be fit for its purpose and fit for any use you made clear to the vendor at the time of sale. Goods must also match their description and a sample on display if one is shown.

If you buy a service, it should be carried out with reasonable skill and care, and materials used must be of satisfactory quality. If no time scale has been set or rate of payment agreed, then the job must be finished within a reasonable time and for a reasonable charge.

MAKING A COMPLAINT

Your online transaction has gone pear-shaped. The item you bought online doesn't do what the website said it would, it's broken or you simply want to send it back. The first step is to follow the company's returns policy. Make sure you clearly state what has gone wrong and why you're returning the item. Keep copies of all correspondence, and make a note of when and to whom you sent emails and letters or made phone calls. If that doesn't get you anywhere, or the person you're talking to is not being very helpful, take the matter to a manager or a more senior employee.

Once you've reached this point and you know you're within your rights but the matter is not being resolved satisfactorily, get some advice. If the company belongs to an organisation, talk to them. There may be an ombudsman who can handle your complaint: for computer companies, for example, try the Personal Computer Association (PCA) at www.pcassoc.org.

You'll find a list of regulatory bodies at www.howtocomplain.com. Enter the name of the company in the search box, and the site will tell you exactly which organisations they belong to. For details of UK trade associations, visit <http://tinyurl.com/yh2rer>. You can also get advice from the Citizens Advice Bureau (www.citizensadvice.org.uk) and Trading Standards (www.tradingstandards.gov.uk). The latter has a website dedicated to providing consumer advice (www.consumerdirect.gov.uk).



◀ Not sure who to complain to? Visit www.howtocomplain.com for a list of regulatory bodies that cover a range of industries



Am I covered? Your consumer rights online and on the high street

The table below summarises how different laws affect your rights according to how you buy

Act	Online	On the high street
Sale of Goods Act 1979	Yes	Yes
Supply of Goods and Services Act 1982	Yes	Yes
Sale and Supply of Goods Act 1994	Yes	Yes
The Sale and Supply of Goods to Consumers Regulations 2002	Yes	Yes
Consumer Protection (Distance Selling) Regulations 2000	Yes; the trump card of consumer protection by virtue of the no-quibble right to reject goods within seven working days of receipt	No
The direct approach	Set up a grudge website and wait for a letter from Megacorp's lawyers telling you that they are going to sue you for all your worldly goods because you have libelled their client. In the meantime, make new friends who also dislike Megacorp, but remember not to give them your home address.	Stand in the store and make a huge scene on a Saturday in the run-up to Christmas until you get what you want. For full effect, remember to tip off the local paper in good time before you create your scene.

At each stage of a complaint it is important to stay calm and resist the temptation to shout abuse at the person you're talking to, no matter how strongly you feel that they're talking nonsense. In other words, always be polite and never lose your temper.

Research the company and find out exactly whom you should be complaining to. All limited companies in the UK are registered at Companies House. If you go to the organisation's website (www.companieshouse.gov.uk) and click on Web Check, you can look up any company by name or part of their name. You can buy copies of the company record report and accounts from the site for £1 each.

Finally, you could try consumer forums and associations such as the BBC's *Watchdog* programme (www.bbc.co.uk/watchdog) or *Which?* magazine (www.which.net). Both of these run pressure and legal campaigns on behalf of consumers.

TALK ABOUT IT

Some contracts specify a dispute resolution process such as mediation or arbitration in an attempt to keep the parties out of court. Mediation is a process of formal negotiation supervised by a mediator who is likely to be an expert in the relevant business or industry area. Unfortunately, the mediator's findings are not usually enforceable, so even if the mediator finds in one party's favour, the other party is not legally obliged to comply with the mediator's decision.

Arbitration is more formal than mediation but it is more practical than court proceedings in that it is less procedure driven. It is also quicker than taking a case to the County Court or High Court. Commercial contracts have arbitration clauses, which state that the parties signing up to the contract are commercial and that in the event of a dispute or disagreement they want the quickest and most straightforward means of

resolving that dispute. This reflects the fact that business people know there is no profit in being in dispute. The arbitrator is likely to be legally and technically qualified in the subject matter and an arbitrator's decision can be enforced through the courts.

If no alternative procedure is specified, the last resort is the County Court. Disputes up to £5,000 are handled in the Small Claims Track, while the Fast Track handles disputes involving sums of up to £15,000 and the Multi Track deals with disputes of more than £15,000. These days very little litigation is conducted in the High Court unless it is over a lot of money or it is particularly complex.

Most businesses try to avoid going to court, as it's expensive, complex, time-consuming and bad for publicity. However, it is the best venue for most consumer-oriented disputes. In the Small Claims Track, the process is informal and the final hearing takes place in front of a judge sitting in Chambers. This means the hearing occurs in the judge's own room rather than in open court, making it less intimidating for many people.

Legal representation is discouraged because there is a general 'no costs' rule. In other words, win, lose or draw, no party is responsible for any costs the other party incurs, save a few minor fixed-cost allowances. However, it is worth noting that costs are set at the discretion of the judge, and there have been cases where judges in the small claims courts have used costs to punish litigants who they consider to have acted 'unreasonably'.

We covered exactly what happens when you take a case to the Small Claims Track in *Shopper* January 2005, and a copy of this article is included on this month's cover disc.

PUT IT IN WRITING

When you write a letter of complaint, you need to make sure you include all the essential information. Always date your letters; you want to create a full audit trail of facts, events, conversations and correspondence. Judges are impressed by contemporaneous documents that set out the facts and the events at the time. They are less than enthralled with accounts that have been written in hindsight. These tend to have a he said/she said playground argument feel to them, undermining the sense of authority you're

Seller beware Preventing online fraud

Thanks to the internet, we're increasingly becoming vendors as well as customers. When selling goods online it's only sensible to wait until the buyer has paid in full for goods and that the payment has cleared before you send them out. If the buyer has used a card fraudulently, the money will be taken back from you, regardless of whether you have dispatched the goods or not.

This also applies to PayPal: if a buyer uses a stolen card to make a payment through PayPal the money will be taken back from your account. You may think that a cheque is a better bet, and in fact cheque fraud is on the decrease, down 13 per cent from 2004 to 2005, but losses still amounted to £40.3 million over that period.

Once you've paid in a cheque, you can call the bank and get confirmation that it has cleared. However, this isn't as straightforward as it might seem. After three days (or more on some accounts) the funds might be available in your account for you to draw on, but the cheque may not have actually cleared. It could take up to two or three weeks for the bank to find out that

the cheque is bogus and take the money back out of your account.

This misunderstanding over what cheque clearing means has been used in a rather nasty cheque scam. You sell an item, the buyer pays with a cheque for considerably more than the item is worth and asks that you pass the excess on to a third party. This seems fair since you can confirm with the bank that the cheque has cleared.

However, when you talk to the bank you have to be clear and specific about the information you require. Otherwise the cashier may simply be telling you that the funds are available, and not that the cheque is legitimate. At some point in the future, the cheque could still be returned unpaid and the money debited from your account, leaving you out of pocket.

Instead, get the buyer to make a payment by internet or telephone banking, or use the clearing house automated payment system (CHAPS). There is a fee for this, but the system is secure, the money is paid the same day and once the funds are available in your account the money is completely yours.



CONSUMER RIGHTS

trying to project, and they're often written with the benefit of legal advice.

At the start of the letter, briefly outline the contents in short bullet points, stating what it is about, where and when the incident happened and precisely what the problem is. Leave the full story for the body of the letter.

Start with a punchy summary that gets the reader up to speed as quickly as possible. The person who opens the letter is most likely to be the assistant of the person to whom you addressed it. Anything that helps them speed the letter on its way to the correct member of staff must be a good thing.

Next, explain the steps you have taken to resolve the problem. Be specific; always include names, dates and details of conversations. Then explain what you would like to happen, what you will do if the company fails to comply and when you will do it. In your first letter, be polite but forceful and avoid being too heavy-handed as there is a good chance the company will comply with your request if you are within your rights and are reasonable. Never make threats

that you are not prepared to see through. Don't make your argument personal or extrapolate judgements about the company or person you're writing to. Telling a person they're of limited mental capacity because they're selling an item that is clearly dodgy won't get you anywhere.

The Civil Procedure Rules 1998 requires cooperation between parties. It is always worth pointing out in the letter that you are behaving 'reasonably'. For example, you could say "I reserve the right to produce a copy of this letter before the court if the matters of reasonable conduct and costs are addressed". You won't be able to do that if you've been rude or abusive. Remember to write all correspondence with the view that it may ultimately be read by a judge. Keep it clean, relevant, factual and reasonable. Then send a copy of the letter to the source of the dispute. It will save time by bringing all the parties involved up to speed at the same time.

THE DIRECT APPROACH

If you have a complaint and neither the court nor a professional body can help, there is always

the direct route. It takes some guts, but standing outside the head office of the organisation that has wronged you with a big placard should at the very least ensure that the senior management will hear of your complaint. This will be even more effective if you can gather a group of people with similar complaints. In the past, such demonstrations have been organised using 'protest' websites to contact supporters. However, be careful not to break the slander and libel laws and remember that you may still not get what you want.

If you feel you've been wronged, you can always complain, even if there's no legal backing to support your claim. The company may not owe you anything, but it is still worth letting them know how you feel. No normal business can afford to ignore constructive criticism that could save or make them money. The key is to use psychology and to push the right buttons, which are invariably financial. You may even get some redress, such as an apology or a discount, that will go some way towards making up for the poor service or goods. **CS**

Court short How to make a claim online

If you have a credit card and 15 minutes to spare, you can issue a claim in the County Court through the Court Service's own Money Claim Online service (www.moneyclaim.gov.uk).

The step-by-step process is very easy but there are a few limitations that restrict its usefulness for one-off consumer disputes. Even in the simplest consumer disputes, the consumer will want to attach supporting documentation to the claim form to help clarify the nature of the dispute and to demonstrate the strength of their claim, such as a copy of a till receipt as evidence of contract and a letter of complaint to

show the demand for repayment. When issuing online, all you can put forward is the claim form itself, along with the limited number of words that you can squeeze into the space available.

The service appears to be more suitable for commercial use by organisations chasing straightforward invoice-based debts, and which are likely to issue their claim forms weekly by the hundreds if not thousands. To see exactly how this service works, we tried it out and can show you the process here so you can make up your own mind.

The online process certainly hasn't taken off as much as you might expect. Although it has

been available since 2002, according to the latest judicial statistics the preferred method is still to issue claims on paper through the regional County Courts. Claimants download a claims form (which is available from <http://tinyurl.com/loob9>), print it off, complete it and then either post it or hand it in at a local County Court.

While County Court staff are not allowed to give advice, they are nonetheless a very useful source of free information. If you complete a paper claim form and take a trip to your local County Court to issue a claim, it's a good idea to have a chat with the counter staff.

1 To start, click the 'I am a claimant' button. Once you have registered, you can issue a new claim or continue with an existing claim. The next screen will give you more information on what happens during the process.

2 You get only 28 characters to describe what the claim is all about. Don't fret, though, as this simply enables the court to categorise your claim. This helps you recognise it more easily at a later stage, and gives the court an idea of the sums that might be involved.

3 Next you have to supply your personal details and provide any information you have on the party you're claiming against.

4 Set out the Particulars of Claim but be careful not to exceed 1,080 characters on 24 lines, because that's all you get.

5 Next, you are asked to specify the amount you're claiming, calculate the court fee (say, £50) and enter solicitor's costs.

6 Finally, you'll arrive at the Payment Summary of Charges. This shows the total you are looking to claim, as well as how much you need to pay to take the claim forward. Once you've done this, the claim is issued.